

**WARREN COUNTY COUNCIL AND COMMISSIONER MEETING MINUTES
MONDAY AUGUST 26, 2019**

COUNCIL AMENDED MINUTES

The Warren County Council and Commissioners met for a joint meeting. Present for the meeting were: John Comer, Matt Commons, Sharon Hutchison, Ethan Foxworthy, George Taylor, Neil Ellis and Lee Kay – Council and Brian Jordan, Adam Hanthorne and Clay Andrews - Commissioners. Also, in attendance are Aaron Mlynek, Jay Wetmore, Lori Austin, Neal Austin, Jack Dalton, Pam Krzystof, Tim Fellure, Robert Sondgeroth, Perry Conrad, Barb Ely, Rebecca Silver, Bob Silver, Marci Burton, Reena Potter, Suzi Etchison, Nikki Elrod, Hunter Armstrong, Phil Astell, Mary Solada, David Gil, Steve Eberly, Brenda Leak, John Kuiper, Britany Besse, Jenny Hobaugh, Matt Herndon, Ingrid Barce.

1. The meeting was called to order by John Comer, Council President and Brian Jordan, Commissioner President.
2. Pledge of Allegiance was led by John Comer.
3. Jordan Creek Windfarm Contracts - Brian Jordan explained the Commissioners will be discussing the construction date extension in the Economic Development agreement and the Road Agreement. John Comer explained the Council will be reviewing the request to extend the abatement.
4. Public comment: Perry Conrad, Jordan Township, asked the Commissioners and NextEra representatives why the plotting of the FAA Obstruction Analysis has the location listed as Boswell on the application. Conrad stated he contacted the FAA and presented information concerning this. The complaints will be filed as per the town listed but the FAA stated to Conrad that they only look at latitude and longitude. David Gil, NextEra, stated the filing with the FAA is per turbine locations and coordination's. The project area, locations of turbines are very definitive coordinates of each and have to be filed with the FAA if even moved per 1 arc second. Gil stated he is unsure as to why the town of Boswell location is listed as such. NextEra perspective is the FAA uses locations for the analysis and distribute permits. The analysis is to ensure air space with the FAA. Perry stated that the FAA does not care about the location or property line but the latitude and longitude. His question is why Williamsport was not the town listed rather than Boswell. Lee Kay stated the FAA report had the first windmill outside of Hedrick and is concerned by Boswell was listed as well. Gil stated that he is unsure as to why Boswell is listed as the coordinates of the turbines is the main concern, but he will inquire as to why. Tim Fellure, county resident, stated concern of the location listed as Boswell on the FAA application. Item #13 relation to airports as Danville is near Hedrick not Boswell. Fellure stated a deception with NextEra. Gil stated, to be clear, the FAA does the analysis to evaluate the airports and the area of the windmills which is based on turbine locations/coordinates. It does not matter what city or town is listed. The FAA will contact airports, department of defense, etc. as the airspace is the reason to file the application. The FAA uses coordinates of the turbines, height, etc. to evaluate. Gil stated he will look into this and let us know. Adam Hanthorne inquired if NextEra filed the FAA reports. Gil explained that this is something that another company does for NextEra, Capital Airspace. Gil stated as he understood, the application, does not list a city but he will check why this was listed. The analysis is based on the turbine locations, not the town listed. Gil stated he understands now this is a concern for the county residents and will check why the FAA report has Boswell listed and let us know. Suzie Etchison stated how can the locations be used for the FAA application if the exact turbine locations have not been filed yet. Jordan stated there is a proposed map with several alternate locations. Brenda Leak, county resident, stated she is part owner of a private air strip and has not had any contact concerning this as of yet, but glad to hear this discussion. Rena Potter, county resident, inquired about the county sound ordinance. Potter questioned if the windmills break the sound ordinance are there any repercussions. Barce stated the Zoning ordinance is in place for the sound violations. John Kuiper, Zoning Director, would enforce the sound limits. Kuiper stated there will need to be sound equipment purchased for this as well. Kuiper read the Zoning ordinance stating the violation is not to exceed \$500 per day if the violation exists. Lori Austin, county resident, asked about the research for the equipment to purchase. Kuiper stated he will have the equipment before the windmills are up and running. Lee Kay suggested reaching out to the Purdue Audiology Department.
5. Economic Development Agreement and Agreements relating to the EDA – Lee Kay stated that at the July 26th meeting the extension of the construction start date was discussed. At that meeting, Kay requested a projected tax payment analysis similar to what was given in 2016. Kay stated the updated analysis was received on August 13th and on August 23rd a revised version was received. The projected analysis received did not have a bonus depreciation example. Kay requested a projected tax payment spreadsheet with bonus depreciation. At the August 26th meeting the agenda lists declaratory resolution/abatement for discussion. Kay received the amended SB-1 on August 23rd at 11:23 a.m. Kay stated that per the contract the delay of construction must be in writing with a 30 days' notice. No written notice has been given. Per the utility report of July 30th the start date was listed as November 2019. The current resolution # 2016-021 for the Economic Development Area does not list Steuben Township and the new SB-1 does, which was not mentioned on the original SB-1. The quarterly utility reports filed by the Jordan Creek Windfarm have many different start construction dates. The amended SB-1 has 3 to 5 employees and the utility application has 8 employees listed which was confirmed to Kay on July 26th by NextEra. Solada stated the employees are for both counties. Kay further stated due to the following: That we received no written notice of delay as per Economic Agreement, the Tax Payment Example including an example with bonus depreciation has not been received by the county, The email receipt of the revised Tax Payment Example with Steuben Township on Friday 8/23/2019 at 11:23 am and the receipt of a revised SB-1 with Steuben Township included when Steuben Township was not mentioned at the July meeting or any other meeting at all, The short notice that there was to be a change in resolution and abatement upon the receipt of the Agenda, that was email receipt of Friday (8/23/2019) at 11:23 a.m. Kay further stated her frustration as she was out of town all weekend as she left at noon on Friday August 23, 2019 and was unable to look at this until this morning and this was thrown in front of us. Kay made a motion to table all decisions until she has time to review all that was received Friday with a second from Neil Ellis. Solada tried to answer the questions but Kay stated no. (Clarification: Kay thought that the discussion was limited to council members since the motion had been presented and seconded. Votes in favor Ellis, Kay and Hutchison; votes nay Taylor, Foxworthy, Comer and Commons. The motion did not pass. Mary Solada, Attorney for NextEra, stated the request was made at the July meeting to have Baker Tilley create the analysis report and the cost would be \$15,000. At that time, Solada, suggested her law firm create the projected tax payment report at no cost. The report states that the Economic Development agreement does include make up payments, so the bonus does not have to be addressed today as this is addressed in the EDA. The county will receive more funds if there is bonus depreciation. The amended SB-1, the reason for the respectful request to the Council, is to allow for a delay in construction for the 6-month period. The construction will be in place prior to the earlier time line anticipated in 2016, completed by the end of next year is the plan. May 15, 2021 was the end date listed to ensure the Council would not have to amend again due to any delays such as weather. The map, that was

approved by the Council in 2016, does include Steuben Township. Kay stated the resolution for the ERA does not include Steuben Township in the document. Solada stated the map, notice, zoning application, approved in 2016, included Steuben township. Indiana law does not require a public meeting to amend the SB1 to include Steuben township, but does require it to be discussed in a public meeting, as we are tonight. The amended SB-1 includes Steuben Township and the extended start date. When Orion presented the project, it was promised at \$150,000,000 and NextEra is promising \$300,000,000 which is accelerating when the funds will be invested in the county. The amended SB-1 is not inappropriate and by law, filing with the county is the only way to amend a tax abatement. Gil stated the EDA amendment was presented, based on discussion with the Commissioners, concerning improving the Road Use Agreement. NextEra has offered compensation for the extension by adding an additional 2% to the cement stabilization which will be 6% total. Kay stated again, at the meeting in July, the discussion was extending of the contract not the resolution or abatement. Solada explained by State Law the Council must approve an amended SB-1. Ethan Foxworthy inquired about the value of the 2% increased cement mix in the Road Use Agreement. Gil explained the estimated cost is \$1,000,000,000 to add 2% to the cement stabilization solution. Hanthorne stated concern about the extension, amendment to the EDA and SB-1 which he feels he was not notified about and the zoning ordinances that were recently changed, do not apply to the project. Adam Hanthorne states his concern that he was under the impression the meeting was to discuss an extension, there were multiple paragraphs added to the EDA and no talk of SB1, no talk to reaffirming zoning, so the additions to it make it hard to process within 2 days of getting them. Gil stated the Economic Development changes were sent several weeks ago. Both Hanthorne and Kay said they did not receive the changes. Solada stated the email went out August 5th. Gil stated the changes were discussed at the last meeting in July. Kay stated the amended EDA has 4 changes. Comer stated they are clarified in the written information. Kay stated she feels they are asking for more than an extension and the written notice should have been a 30-day notice. Commons stated this was presented a few meetings ago. Kay stated many issues and would like more time to study the changes. Matt Commons made a motion to approve the Jordan Creek Windfarm tax abatement extension. Solada stated the amended SB1 would need to be included in the motion. Matt Commons amended his motion to approve the Jordan Creek Windfarm tax abatement extension and the amended SB1 with a second from George Taylor. Kay stated as Steuben Township is not in the resolution, Steuben Township cannot be added to the abatement. Barce stated if the map does include Steuben Township then it would be included. Much discussion and disagreement concerning including Steuben Township. Comer inquired if all items that Kay disagrees with are clarified, would she be willing to vote for the extension. Kay stated she is unsure as she needs to study and talk to other counties concerning the bonus depreciation. Solada explained the depreciation is in the EDA. Comer inquired about any more discussion for the motion? The vote is Comer, Commons, Taylor, Foxworthy yay and Kay, Ellis nay with Hutchison abstaining. The record shows this passed.

6. Road Use Agreement – Brian Jordan inquired about the timeline concerning the remainder of the information for the road use agreement being finalized. Gil stated that information is being worked on. A draft of the road route should be to the Commissioners this week. The road survey should be available very soon as well as a finalized site plan for building permits. Gil stated the preliminary survey, map of drainage locations, etc. for the road use agreement should be soon as well. Hanthorne inquired about right of way agreements, drainage ponds, etc. Gil stated these are items that they are currently working on and should have to the Commissioners very soon. Jordan stated that in RUA there are exhibits C, E, F, G, H that are blank. Kay interjected that the amendment to the EDA was prepared by the NextEra attorney and not Barce. Jordan explained to the public that NextEra had approached the County with an offer of \$100,000 to do the extension. The 6% solution increased was negotiated rather than the \$100,000 by the Commissioners. Therefore, there is benefit if the extension is granted. Hanthorne inquired how much will this help as in the RUA it states that the roads must to be returned to the current state or better. Foxworthy inquired about the current conditions of the roads. Matt Herndon, Highway Department Superintendent, stated he has not worked with the stabilization products and the Benton County Highway Department Superintendent had stated the increase would greatly benefit Warren County. Jay Wetmore, road expert, stated that specifying a solution before the roads are evaluated is an extraordinary or extreme measure. Wetmore stated the solution will put the road above the existing condition. Hanthorne inquired about the 4% solution compared to the 6%. Wetmore stated that most do not specify this without having an assessment done. Gil stated this will ensure much better roads during construction and after construction. Hanthorne inquired about the responsibility of the roads during the construction. Gil stated NextEra is responsible for the road maintenance in the RUA during construction. Hanthorne stated with the 4% being a rarity, adding 2% is not worthwhile reason for negotiations for the extension as there has been ample time to start the project and not enough benefit to do the extension for the county. Jack Dalton, county resident, questioned what way is it determinantal to the County not to allow the extension or is it a personal issue? Kay stated why allow to extend as they have filed a utility report on July 30, 2019 with the construction date of November 2019 already. Gil explained the filing stated between November and May due to awaiting the current discussions. George Taylor answered the question stating nothing will be detrimental to the County if extended. Dalton stated the roads in Benton County road were in better shape than our Warren County roads before their wind project, so this will create better roads in Warren County, which is a value to the County. Hanthorne stated his opinion is the road base is different in Warren County than Benton County so there is no comparison to the roads in each County. Perry Conrad, county resident, inquired about what good is the extension to the County as there had been a time when the County had to return funding to the State because of NextEra. Jordan explained the Community Crossings Grant had to return funds due to the Highway Department not completing work detailed in the grant and had nothing to do with NextEra. Perry apologized for misunderstanding. Jenny Hobaugh, Highway Department Office Manager and Herndon explained the amount returned was around \$200,000. Tim Fellure, county resident, inquired about why improving roads with the additional mix was not offered in 2016? Additionally, Fellure questioned the permitted delay. Hanthorne explained the permitted delay is separate to the extension as such would be in a contract not an extension. Jordan inquired if the extension would not be permitted how would the construction process proceed? Gil explained the construction was scheduled to begin in November, but not all will begin in November as waiting until after winter to begin the major construction. The minimum of work will be done in November, probably use a turbine location close to a highway or Benton County as to not damage the roads as road work has not been started. The other work and preconstruction work will all come later. The extension is really a formality, until after the winter, as this would be very hard on the residents, as well as difficult on the roads. The 6% stabilization is a substantial upgrade and benefit to the County. The wind project was purchased by NextEra from Orion. NextEra has more experience in the building of wind projects. The 3-phases extended out the impact to the County and residents; by doing this in one phase, it will reduce the impact to the residences and County. Gil stated NextEra is just asking to make the agreement better for the County and to cooperate with the residents and County. Perry Conrad, county resident, stated there was no transparency before, as the attorney remains the same as the Orion's attorney, so how can you be more transparent? George Taylor stated there are people opposed and others that are not opposed and the windfarm is coming, as stated earlier, it is not good to pour concrete in the winter, so this would be good for the County. Neal Austin, county resident, stated he sees a bunch of corrupt idiots that are legislating his property rights away and they do not have the legal right to do this, so do not point fingers at us when you are the ones separating the county. Tim Fellure, county resident, stated he questioned the Council in January 2019 about the phases of the abatement as after the last Economic Development payment, they can transfer all 3 agreements. Indiana utility commission Cause #44978, their testimony stated start date of 2019. Kay again stated issues concerning the start date and extension. Fellure stated information concerning the NIPSCO contracts with NextEra. Gil

explained again the extension and the project starting in spring would be much better for the road work needed making better roads for the County. Suzi Etchison, county resident, stated an issue with the transmission lines on State Road 63 as 80% of the landowners will not give access for the transmission lines. Gil explained the INDOT transmission lines are separate from the construction of wind turbines and this is not the reason for the requested extension. Etchison stated starting in May the farmers will be working and this will make things very hard as this will be chaos. Pam Krzystof, county resident, stated that she is not for the windmills as this will impact her life. She wanted 3000 feet setbacks which the Council and Commissioners should be working for the health and welfare of the county residents. Nikki Elrod, county resident, stated the County needs to work together and focus on the positivity of this project as our roads will be better. Rusty Hart, Sheriff, inquired if we do not grant the extension, then will they will go ahead and pour concrete regardless? Hanthorne inquired about RUA #4 exhibit D not being the road use agreement. Solada inquired about paragraph #5 in the EDA. Hanthorne inquired if this could be removed. Solada stated if the Commissioners are willing to sign then they will remove #5 as this is just for clarification. Hutchison explained that it is transparency. Jordan inquired about any more discussion. Hanthorne inquired to Barce if this amendment can be made if not given 30 days written notification. Solada stated that she had been communicating with the County Attorney since May. Hanthorne stated he received the paperwork on Friday and he wants to be sure this is done correctly. Hanthorne made a motion to table the EDA until Monday. Clay Andrews made a motion to approve the amendment to the Economic Development Agreement with a second from Brian Jordan. Brian Jordan and Clay Andrews voted in favor; Adam Hanthorne opposed. Clay Andrews made a motion to approve the amended Road Use Agreement with the increase to 6% with a second by Brian Jordan. Clay Andrews and Brian Jordan voted in favor; Adam Hanthorne opposed.

The next County Council meeting will be Monday August 26, 2019 at 6:00 p.m.

The next County Commissioner meeting will be Tuesday September 3, 2019 @ 6:30 p.m.

There being no further business, Clay Andrews made a motion to adjourn the Commissioners Meeting with a second from Adam Hanthorne, all voted in favor.

There being no further business, Matt Commons made a motion to adjourn the Council Meeting with a second from Ethan Foxworthy, all voted in favor.

ATTEST: Robin Weston-Hubner
Robin Weston-Hubner

WARREN COUNTY COUNCIL

John Comer
John Comer, President

Sharon Hutchison
Sharon Hutchison, Vice President

Ethan Foxworthy
Ethan Foxworthy

Laurie "Lee" Kay
Laurie "Lee" Kay

Neil Ellis

Matt Commons
George Taylor
George Taylor